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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9238/2019 & CM Appl. No. 38115/2019 (stay)**

SI (MIN) SHIV SAGAR GIRI Petitioner
Through Mr. O.P.Agarwal, Advocate

versus

UNION OF INDIA AND ORS. Respondents
Through Mr. Kamal Kant Jha, Sr. panel
counsel with Mr. Prabhakar Thakur &
Mr. Siddharth Jha, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
29.08.2019

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1. The Petitioner has approached this Court aggrieved by the failure by the Respondents to decide his application dated 10th April, 2019 whereby he had given up his right to be promoted from the post of Sub Inspector (Ministerial) to the Inspector (Ministerial) and requested that he should be retained either at the Headquarters of the BSF at New Delhi or any Head Quarters located at Delhi in view of his ‘unavoidable family/domestic problems.’

2. When the petition was first listed before this Court on 27th August, 2019 learned counsel for the Petitioner apprehended that some precipitate decision promoting the Petitioner as Inspector and transferring him to some other location might be taken and he prayed therefore for urgent interim orders.

3. On the last date of hearing that is 27th August 2019, learned senior panel counsel appearing for the Respondents who appeared on advance notice informed the Court that he needed two day's time to inform the Court of the fate of the Petitioner's representation dated 10th April, 2019. At his request, the matter was kept for today.

4. Today when the matter was called out, the learned counsel for the Petitioner produced before the Court, a copy of the movement order which was passed on that very day when the matter was heard by the Court i.e. on 27th August, 2019 by the IG, New Delhi, where the Petitioner is addressed as "now Inspector (Min)" and he has been given orders to move to 17th Battalion, BSF, Chhatisgarh Frontier for further adjustment in a field unit.

5. The Court enquired from counsel for the Respondent whether the Petitioner's representation dated 10th April, 2019 had been examined and responded to. On instructions he stated that at the time when the representation was made, it was considered to be pre-mature since at that point of time there was no proposal to either promote the Petitioner as Inspector or to transfer him elsewhere. However, he was candid that at the time the aforementioned order dated 27th August, 2019 was passed, the Petitioner's representation, which had been kept pending in the file, was not responded to. He offered to now take a decision on the Petitioner's representation and communicate the decision to the Petitioner within the time as directed by this Court.

6. From the order dated 27th August, 2019 produced before this Court it

appears that the Respondents have already decided to promote the Petitioner as Inspector and have also taken a decision on his transfer. If there was any material with the Respondents which influenced such a decision and that material was adverse to the Petitioner, as was suggested by counsel for the Respondents in the course of his submissions, then it ought to have been communicated to the Petitioner. Also, now requiring the Respondents to decide the representation of the Petitioner, when they have already taken the above decision, would be a pointless exercise unless the decision is set aside and the Respondent is asked to decide the application uninfluenced by the decision taken.

7. Considering that the Petitioner's apprehension expressed before this Court on 27th August, 2019 has turned out to be correct and considering that his application dated 10th April, 2019 was in fact not decided by the Respondent the Court passes the following directions:

i) The movement order dated 27th August, 2019 produced before this Court today is hereby set aside.

ii) Within a period of two weeks from today and in any event not later than 16th September, 2019 the Respondents will take a decision on the Petitioner's aforementioned application dated 10th April, 2019.

iii) If in the course of taking such decision the Respondents seek to rely on any complaint/material against the Petitioner it will then be incumbent on the Respondents to provide such material to the Petitioner and seek his

response thereto.

iv) The decision of the Petitioner's application will be communicated to the Petitioner not later than one week after it is taken.

v) It will be open to the Petitioner to seek appropriate remedies in accordance with law, if such decision is adverse.

8. The writ petition is disposed of in the above terms. The pending application is also disposed of.

9. Copy of this order be given *dasti* under the signatures of Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 29, 2019

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